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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 SILVIA SANDOVAL,

Case No. 2:17-cv-00959-APG-PAL

7 Plaintiff,

8 v.

ORDER

9 ALBERTSONS, LLC, d/b/a ALBERTSONS,

(Stip re Discovery – ECF No. 47)

10 Defendant.

11 This matter is before the court on the parties' Stipulation re Discovery (ECF No. 47), which
12 addresses Plaintiff Silvia Sandoval's Sealed Response to Defendant Albertsons, LLC's Motion for
13 Summary Judgment (ECF No. 46). This Stipulation is referred to the undersigned pursuant to 28
14 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local Rules of Practice.

15 The stipulation asks the court to permit Sandoval to file her response under seal pursuant
16 to the protective order regarding Albertsons' confidential policies and procedures. *See* Oct. 26,
17 2017 Mins. of Proceeding (ECF No. 19) (granting Mot. for Protective Order (ECF No. 14)).
18 Sandoval's response attaches Albertsons' Sales Floor Inspection Worksheet-Retail Company
19 Policy as Exhibit 5. *See* Sealed Mot. Ex. 5 (ECF No. 46-5). In addition, the response directly
20 references or quotes portions of the document. The stipulation states that this court has previously
21 found "good cause" under *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir.
22 2006), to seal similar policy and procedure documents. *See* Order (ECF No. 33) (granting
23 Stipulation (ECF No. 30) regarding Sandoval's Motion for Adverse Presumption or Inference Due
24 to Defendant's Spoliation of Evidence (ECF No. 28)). The stipulation asserts that "compelling
25 reasons exist to support secrecy due to the need to protect Defendant's confidential and proprietary
26 information." Although Sandoval has not filed a redacted version of her response and the parties
27 did not attach a proposed redacted version, the stipulation identifies the specific portions of
28 Sandoval's response referencing confidential information.

1 As a general matter, there is a strong presumption of access to judicial records. *Kamakana*,
2 447 F.3d at 1179. “In keeping with the strong public policy favoring access to court records, most
3 judicial records may be sealed only if the court finds ‘compelling reasons’.” *Oliner v. Kontrabecki*,
4 745 F.3d 1024, 1025–26 (9th Cir. 2014) (citing *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 677–
5 78 (9th Cir. 2010)). The Ninth Circuit has carved out an exception to the strong presumption of
6 access for certain discovery materials where the movant makes a particularized showing of “good
7 cause” under Rule 26(c) of the Federal Rules of Civil Procedure that rebuts the public’s right of
8 access. *Foltz v. State Farm Mut. Ins. Co.*, 331 F.3d 1122, 1135, 1138 (9th Cir. 2003) (holding that
9 the good cause exception is “expressly limited” to materials attached to “a *non-dispositive*
10 motion”); Fed. R. Civ. P. 26(c) (a district court may issue a protective order “to protect a party or
11 person from annoyance, embarrassment, oppression, undue burden or expense”).

12 The strong presumption of access to judicial records “applies fully to dispositive pleadings,
13 including motions for summary judgment and related attachments.” *Kamakana*, 447 F.3d at 1179.
14 Thus, a movant must show “compelling reasons” to seal judicial records attached to a dispositive
15 motion. *Id.* (citing *Foltz*, 331 F.3d at 1136). In general, compelling reasons exist when court
16 records might become a vehicle for improper purposes, such as “to gratify private spite, promote
17 public scandal, circulate libelous statements, or release trade secrets.” *Demaree v. Pederson*, 887
18 F.3d 870, 884 (9th Cir. 2018) (quoting *Kamakana*, 447 F.3d at 1179); *see also Oliner*, 745 F.3d at
19 1026 (finding that embarrassment, annoyance, or undue burden were not compelling reasons for
20 sealing). “The mere fact that the production of records may lead to a litigant’s embarrassment,
21 incrimination, or exposure to further litigation will not, without more, compel the court to seal its
22 records.” *Demaree*, 887 F.3d at 884–85 (quoting *Kamakana*, 447 F.3d at 1179).

23 The Ninth Circuit adopted this principle of disclosure for dispositive motions because “the
24 resolution of a dispute on the merits, whether by trial or summary judgment, is at the heart of the
25 interest in ensuring the “public’s understanding of the judicial process and of significant public
26 events.” *Kamakana*, 447 F.3d at 1179. When applying the compelling reasons standard, “a district
27 court must weigh relevant factors, base its decision on a compelling reason, and articulate the
28 factual basis for its ruling, without relying on hypothesis or conjecture.” *Pintos*, 605 F.3d at 679.

1 “Relevant factors” include, but are not limited to, the “public interest in understanding the judicial
2 process and whether disclosure of the material could result in improper use of the material for
3 scandalous or libelous purposes or infringement upon trade secrets.” *Id.*

4 Here, the parties’ conclusory statement that compelling reasons exist based on “the need
5 to protect Defendant’s confidential and proprietary information” is insufficient to meet the burden
6 of making a *particularized showing of compelling reasons* for sealing Exhibit 5. A party’s burden
7 to show compelling reasons for sealing is not met by general assertions that the information is
8 “confidential” or a “trade secret;” rather, the movant must “articulate compelling reasons
9 supported by specific factual findings.” *Kamakana*, 447 F.3d at 1178. The Ninth Circuit has
10 expressly rejected efforts to seal documents under the “compelling reasons” standard where the
11 movant makes “conclusory statements about the contents of the documents—that they are
12 confidential and that, in general,” their disclosure would be harmful. *Id.* at 1182.

13 The party who designates a document confidential is required to meet the appropriate
14 standard. Albertsons has not asserted or shown specific harm or prejudice that it expects will result
15 from disclosure of Exhibit 5. Albertsons has not identified with any particularity whether Exhibit 5
16 contains such information as trade secrets, legal and business assessments and strategy, financial
17 information and communications, or incentives and negotiations over contract terms where such
18 information could cause competitive harm if disclosed publicly. The court cannot speculate as to
19 whether Exhibit 5 contains such information. The parties’ reliance on the court’s prior orders is
20 insufficient to establish compelling reasons to seal Exhibit 5. The court granted Albertsons a
21 protective order regarding its confidential policies and procedures and sealed related information
22 pursuant to the good cause standard articulated in Rule 26(c). The compelling reasons standard
23 requires more.

24 In addition, the Ninth Circuit has made clear that the sealing of entire documents is
25 improper when confidential information can be redacted to leave meaningful information available
26 to the public. *Foltz*, 331 F.3d at 1137. To the extent that a sealing order is permitted, it must be
27 narrowly tailored. *See, e.g., Press-Enterprise Co. v. Superior Ct. of Cal., Riverside Cnty.*, 464
28 U.S. 501, 512 (1984) (sealing orders should be “limited to information that [is] actually sensitive”).

1 Thus, only the portions of a filing that contain specific reference to confidential documents or
2 information, and exhibits that contain such confidential information, may be filed under seal. *In*
3 *re Roman Catholic Archbishop of Portland*, 661 F.3d 417, 425 (9th Cir. 2011). The remainder of
4 the filing, and other exhibits that do not contain confidential information, must be filed as publicly-
5 accessible documents. *See* LR IA 10-5(b) (“The court may direct the unsealing of papers filed
6 under seal, with or without redactions, after notice to all parties and an opportunity to be heard.”).

7 To date, Plaintiff has not filed a redacted version of her response. Litigants cannot seal an
8 entire dispositive motion or response and all attachments but must file a redacted version on the
9 public docket along with the non-confidential documents submitted as exhibits.

10 Accordingly,

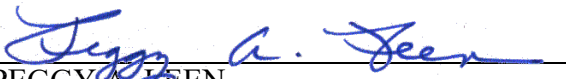
11 **IT IS ORDERED:**

- 12 1. The parties’ Stipulation (ECF No. 47) is **GRANTED in part and DENIED in part**
13 **without prejudice.**
- 14 2. By **October 23, 2018**, Plaintiff Silvia Sandoval must REDACT her response as
15 described in the Stipulation and FILE the redacted version on the public docket while
16 LINKING the new filing in CM/ECF to her Sealed Response (ECF No. 46). The
17 redacted response must ATTACH Exhibits 1–4 and 6–13, which the parties do not
18 assert contain confidential information.
- 19 3. Plaintiff Silvia Sandoval’s Sealed Response to Motion for Summary Judgment (ECF
20 No. 46) shall remain under seal unless and until the court either denies a motion to seal
21 or enters an order unsealing the response.
- 22 4. By **October 30, 2018**, Defendant Albertsons must FILE either: (i) a motion to seal
23 making a *particularized showing of compelling reasons* for sealing Exhibit 5 and the
24 portions of Sandoval’s response discussing Exhibit 5, or (ii) a notice indicating that the
25 documents do not require sealing.
- 26 5. Any request for sealing must comply with the Ninth Circuit’s standards in *Kamakana*
27 and must include a memorandum of points and authorities making a particularized
28 showing why each document(s) should be sealed or redacted. The motion should also

1 include a supporting declaration or affidavit, a proposed order granting the motion to
2 seal, and, if applicable, a proposed redacted version of the filing.

- 3 6. If Defendant Albertsons fails to timely file a motion to seal in compliance with this
4 Order, the Clerk of the Court will be directed to unseal the documents to make them
5 available on the public docket.

6 Dated this 16th day of October 2018.

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8 
9 PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE